

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ARISTA RECORDS LLC; ATLANTIC	)	
RECORDING CORPORATION; BMG	)	
MUSIC; CAPITAL RECORDS, INC.;	)	No. 07-CIV-8822 (HB)
CAROLINE RECORDS, INC.; ELEKTRA	)	
ENTERTAINMENT GROUP, INC.;	)	
INTERSCOPE RECORDS; LAFACE	)	
RECORDS LLC; MAVERICK RECORDING	)	<b>REPLY DECLARATION OF</b>
COMPANY; SONY BMG MUSIC	)	<b>GIANNI P. SERVODIDIO IN</b>
ENTERTAINMENT; UMG RECORDINGS,	)	<b>SUPPORT OF PLAINTIFFS'</b>
INC.; VIRGIN RECORDS AMERICA, INC.;	)	<b>MOTION FOR LEAVE TO FILE</b>
WARNER BROS. RECORDS INC.; and	)	<b>AMENDED COMPLAINT</b>
ZOMBA RECORDING LLC,	)	
Plaintiffs,	)	<b>[REDACTED VERSION FILED</b>
	)	<b>PURSUANT TO PROTECTIVE</b>
	)	<b>ORDER]</b>
v.	)	
USENET.COM, INC.,	)	
Defendant.	)	

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I, Gianni P. Servodidio, declare as follows:

1. I am a partner with the law firm of Jenner & Block LLP, and represent in this action the plaintiff recording companies. I submit this reply declaration in support of their Motion for Leave to File Amended Complaint. The statements made in this declaration are based on my personal knowledge including on information provided to me by colleagues or other personnel working under my supervision on this case. If called to testify as a witness, I would testify as follows:

2. I participated in a call on March 12, 2008 with Gerald Reynolds and his counsel Charles Baker, in addition to two of my colleagues and two non-testifying consultants. The call

was convened to discuss Defendant's spoliation of key evidence from computer servers that we had been told in Defendant's interrogatory responses were owned by Usenet.com. During the call, we were told for the first time that Usenet.com did not own and operate all of the servers involved in its infringing service. On the call, Reynolds told us that an unnamed "third party" operated the back-end servers. I directly asked Reynolds to identify who owned and operated the back-end servers. On the advice of his counsel, who objected that we were straying from the purpose of the call, Reynolds *refused* to disclose that Sierra was the owner of the back end servers.

3. Attached hereto as Exhibit 1 is a true and correct copy of an unsigned "Master Services Agreement," bates labeled USE00000003-8, produced by Defendant in this litigation.

4. Defendant also produced "configuration files" for back end servers in May 2008. However, the produced configuration files for the back end servers do not reveal or suggest that Sierra is the owner of those servers.

5. During meet-and-confer sessions to discuss deficiencies in Defendant's discovery productions, Plaintiffs' counsel have repeatedly pressed for documents and information concerning the back-end servers. Plaintiffs also sought discovery from Reynolds and Sierra, and subsequently from the five other entities owned by Reynolds also providing Usenet-related services, any of which may have operated the back-end Usenet.com servers. But Reynolds and the entities have stonewalled that discovery forcing Plaintiffs to file motions to compel responses to four other subpoenas in order to obtain even a single responsive document.

6. When Defendant's counsel did purport to provide information about the back-end servers during informal discussions among counsel, the information Defendant provided was equivocal and seemingly unreliable. Indeed, Defendant's counsel mistakenly represented for a

period of time in August that some of the back-end servers – the feeds servers located at superfeed.net – were owned by another of Reynold's entities, Nuthinbutnews.com, Inc. While Defendant's counsel corrected this error after further investigation, the episode is emblematic of the challenge Plaintiffs faced in getting a straight answer to a simple question.

7. Concurrently with the discussions above, Plaintiffs have steadily established through discovery, after countless meet-and-confers to obtain even basic documents from Defendant, that there is a *lack* of documents showing any real arms-length relationship between Usenet.com and Sierra regarding the Usenet.com service, and that Reynolds has been personally participating in all aspects of the infringing Usenet.com service.

8. In its first supplemental interrogatory responses, Defendant identifies [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Defendant has produced in this litigation documents reflecting [REDACTED]

[REDACTED]

[REDACTED]

9. Usenet.com has not produced any document identifying any bank accounts that it maintains in its own name or otherwise.

10. Defendant filed a motion to dismiss on personal jurisdiction grounds at the outset of the case. However, in March 2008, in face of the undeniable fact of substantial contacts with New York subscribers – and Reynolds's spoliation of evidence that would have shown countless downloads of infringing copies of Plaintiffs' works by New York users – Defendant withdrew that motion and consented to jurisdiction in this District.

11. Attached hereto as Exhibit 2 are excerpts of the deposition of Gerald Reynolds, taken August 13, 2008, in the above-captioned case.

12. Attached hereto as Exhibit 3 is a document bates labeled Sierra 000247, produced by Sierra Corporate Design, Inc. in the above-captioned case, showing [REDACTED]

13. Attached hereto as Exhibit 4 is a document bates labeled USE00014318-41, produced by Defendant in the above-captioned case, showing that [REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 5, 2008, in New York, NY.

s/ Gianni P. Servodidio  
Gianni P. Servodidio

# **EXHIBIT 1**

**REDACTED**

## **EXHIBIT 2**

Page 1

1 JERRY REYNOLDS  
2 UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 ARISTA RECORDS LLC; ATLANTIC )  
5 RECORDING CORPORATION; BMG )  
6 MUSIC; CAPITOL RECORDS, INC.; )  
7 CAROLINE RECORDS, INC.; )  
8 ELEKTRA ENTERTAINMENT GROUP )  
9 INC.; INTERSCOPE RECORDS; )  
10 LAFACE RECORDS LLC; MAVERICK ) Case No. 07-civ-8822 (HB)  
11 RECORDING COMPANY; SONY BMG )  
12 MUSIC ENTERTAINMENT; UMG )  
13 RECORDINGS, INC.; VIRGIN )  
14 RECORDS AMERICA, INC.; WARNER )  
15 BROS. RECORDS INC.; and ZOMBA )  
16 RECORDING LLC )  
17 )  
18 Plaintiffs, )  
19 )  
20 v. )  
21 )  
22 USENET.COM, INC. )  
23 )  
24 Defendants. )  
25 )

\*\*\*\*\*

18 ORAL AND VIDEOCONFERENCE DEPOSITION OF  
19

20 JERRY REYNOLDS  
21

22 AUGUST 13, 2008  
23

24 \*\*\*\*\*  
25 \*\*\*\*\*

1 JERRY REYNOLDS

2 (Continued)

3

4

5

6 \*\*\*\*\*

7 ORAL AND VIDEOCONFERENCE DEPOSITION OF

8 JERRY REYNOLDS

9 AUGUST 13, 2008

10 \*\*\*\*\*

11

12

13

14 ORAL AND VIDEOCONFERENCE DEPOSITION OF JERRY  
15 REYNOLDS, produced as a witness at the instance of the  
16 PLAINTIFFS, and duly sworn, was taken in the  
17 above-styled and numbered cause on AUGUST 13, 2008, from  
18 7:32 a.m. to 10:08 a.m., before Aubrea Hendricks, CSR,  
19 RPR, CLR, in and for the State of Texas, reported by  
20 machine shorthand, at the offices of Porter & Hedges,  
21 LLP, Reliant Energy Plaza, 1000 Main Street, 36th Floor,  
22 in the City of Houston, County of Harris, State of  
23 Texas, pursuant to the Federal Rules of Civil Procedure  
24 and the provisions stated on the record or attached  
25 hereto.

1 JERRY REYNOLDS

2 Usenet.com, Inc. and Sierra Corporate Design with  
3 regards to each company's Usenet servers, it's a peering  
4 relationship. It is peer with each other.

5 Q. Okay. Is there more storage capacity on the  
6 servers operated by Sierra than there is on the servers  
7 operated by Usenet.com?

8 A. Yes.

9           Q.     Okay.  So do some of the articles -- and so  
10    Usenet.com obtains the articles that it transmits to  
11    subscribers from the peering servers operated by Sierra;  
12    is that -- is that fair?

13 A. Can you ask that again, please?

14 Q. Usenet.com obtains copies of the articles that  
15 it provides to its subscribers from the servers operated  
16 by Sierra; is that fair?

17           A.     Providing that Usenet.com servers do not have  
18     the article in the first place, then it would -- it  
19     would check the Sierra servers to see if -- it would ask  
20     do you have this article and if so, then, it would -- it  
21     would transmit.

22 Q. Only if the Usenet.com servers don't  
23 themselves have the articles would they then go and  
24 request the articles be made available from the Sierra  
25 servers; is that -- is that correct?

# 1 JERRY REYNOLDS

2 A. Yes.

3 Q. Okay. So I want to ask this again. How long  
4 do the servers operated by Usenet.com keep copies of  
5 those -- of the articles on the servers themselves?

6                   A.     I wouldn't have any way to answer that. I  
7     don't know.

8 Q. Would there be anyone else at the company who  
9 would be more knowledgeable on that than yourself?

10 A. Absolutely not, no. It's -- the company's me.

11 Q. Well, how would you try to determine an answer  
12 to that question if you were to try and get an answer?

13           A. Well, Usenet, it's a -- it's a transitory  
14        network. Everything's always flowing. Nothing's  
15        static. There's many different aspects of what would  
16        cause articles to stay on a server for a certain period  
17        of time. So with everything always moving and  
18        everything always -- and all the variables always  
19        changing by the minute, it is almost impossible to  
20        determine any set period of time for articles to be  
21        cached on the Usenet.com servers.

22 THE REPORTER: Cached you said?

23 THE WITNESS: Cached.

24 MR. SERVODIDIO: I'm still having a hard  
25 time hearing the witness so is there any way to adjust

# 1 JERRY REYNOLDS

2 any technical support services to Usenet.com  
3 subscribers?

4 A. Yes.

5 Q. Can you tell us what those services are?

6           A.     There is a -- a management contract between  
7     Usenet.com and Sierra Corporate Design, Inc. where  
8     Usenet.com contracts with Sierra to provide tech  
9     service.

10 Q. Okay. So there are -- are there Sierra  
11 employees who respond to e-mails from Usenet.com  
12 subscribers?

13 A. Not currently, no.

14 Q. How -- how about in the past?

15 A. In the past, yes.

16 Q. When did that stop taking place?

17 A. I'd have to go back and review.

18 Q. Okay. Did -- who currently responds to  
19 e-mails from Usenet.com subscribers?

20 MR. BAKER: Gianni, I mean, we've got a  
21 certain period of time today and we're talking a lot  
22 about Sierra.

23 MR. SERVODIDIO: I know.

24 MR. BAKER: Okay. This is -- this is not  
25 a deposition of Sierra. This is a deposition of

# 1 JERRY REYNOLDS

2 A. Yes, I see that.

3 Q. Okay. Is that -- is your understanding that  
4 that would be the user name of one of your subscribers?

5 A. I --

6 MR. BAKER: Are you asking if Helo  
7 evilC66 is the user name?

8 MR. SERVODIDIO: Yeah.

9 MR. BAKER: Okay.

10                   A.     I can't say that.   I'd have to verify what  
11                   this is.

12 Q. You're not sure?

13 A. I've never seen that before. I don't know.

14 Q. Do you think that -- sitting here today, do  
15 you think that would be anything else other than the  
16 user name of one of your subscribers?

17 A. I believe it could be anybody.

18 Q. Okay. I'm going to direct your --

19 A. I don't -- I don't know.

20 Q. That's fine. I'm going to direct your  
21 attention to the third page of the document. At the  
22 very top of -- the very first line on that page,  
23 Mr. Reynolds, dated 5-16-2008, do you see that?

### 24 A. The very first line?

25 Q. Yes, the very first line underneath where it

# 1 JERRY REYNOLDS

2 says news3.log.

3 A. Yes.

4 Q. Do you see that line?

5 Can you identify what -- what that line  
6 signifies for us?

7 A. You would like me to read it?

8                   Q.     No, I'd like your understanding of what it  
9 means.

10 A. I -- I can't say. I -- I don't review these  
11 type of logs. I don't work with them. I don't know  
12 what this --

13 Q. Who does at your company?

14 A. Nobody. There's -- there's --

15 Q. Does --

16 A. There's just me.

17 Q. Okay. Is there any consultants who -- or  
18 other people that you employ who would have more  
19 knowledge about these types of logs than yourself?

20 A. No.

21 Q. Okay. Does it -- the line, though, that I  
22 referred you to does have something at the end called an  
23 art -- and it says article and then there's a number.  
24 Do you see that?

25 A. Yes.

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1 JERRY REYNOLDS

2 I, JERRY REYNOLDS, have read the foregoing  
3 deposition and hereby affix my signature that same is  
4 true and correct, except as noted above.

5

6

7 JERRY REYNOLDS

8 THE STATE OF \_\_\_\_\_)

9 COUNTY OF \_\_\_\_\_)

10

11 Before me, \_\_\_\_\_, on this day  
12 personally appeared JERRY REYNOLDS, known to me to be  
13 the person whose name is subscribed to the foregoing  
14 instrument and acknowledged to me that they executed the  
15 same for the purposes and consideration therein  
16 expressed.

17 Given under my hand and seal of office this \_\_\_\_\_  
18 day of \_\_\_\_\_, 2008.

19

20

21

22 NOTARY PUBLIC IN AND FOR

23 THE STATE OF \_\_\_\_\_

24 COMMISSION EXPIRES: \_\_\_\_\_

25

JERRY REYNOLDS  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ARISTA RECORDS LLC; ATLANTIC )  
RECORDING CORPORATION; BMG )  
MUSIC; CAPITOL RECORDS, INC.; )  
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BROS. RECORDS INC.; and ZOMBA )  
RECORDING LLC )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
USENET.COM, INC. )  
 )  
Defendants. )  
 )

REPORTER'S CERTIFICATION  
DEPOSITION OF JERRY REYNOLDS  
AUGUST 13, 2008

I, Aubrea Hendricks, Certified Shorthand Reporter, Registered Professional Reporter and Certified LiveNote Reporter in and for the State of Texas, hereby certify to the following:

That the witness, JERRY REYNOLDS, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

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1 JERRY REYNOLDS

2 That the deposition transcript was submitted on  
3 \_\_\_\_\_ to the witness or to the attorney  
4 for the witness for examination, signature and return to  
5 me by \_\_\_\_\_;6 That the amount of time used by each party at the  
7 deposition is as follows:

8 MR. GIANNI P. SERVODIDIO - 02:36

9 That pursuant to information given to the  
10 deposition officer at the time said testimony was taken,  
11 the following includes counsel for all parties of  
12 record:

13 FOR THE PLAINTIFFS:

14 Mr. Gianni P. Servodidio, Esq.

15 JENNER &amp; BLOCK, LLP

16 919 Third Avenue, 37th Floor

17 New York, New York 10022

18 T: (212) 891-1690

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20 FOR THE PLAINTIFFS:

21 Ms. Tracy Penn, Esq.

22 GARDERE WYNNE SEWELL, LLP

23 1000 Louisiana, Suite 3400

24 Houston, Texas 77002-5011

25 P: (713) 276-5500

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26 FOR THE RECORDING INDUSTRY ASSOCIATION OF AMERICA:

27 Mr. Scott A. Zebrak, Esq.

28 1025 F Street, N.W., 10th Floor

29 Washington, DC 20015

30 P: (202) 857-9608

JERRY REYNOLDS

FOR THE DEFENDANT:

Mr. Charles S. Baker, Esq.

PORTER & HEDGES, LLP

## Reliant Energy Plaza

1000 Main Street, 36th Floor

Houston, Texas 77002

P: (713) 226-6676

F: (713) 226-6276

That \$ \_\_\_\_\_ is the deposition officer's charges to the PLAINTIFFS for preparing the original deposition transcript and any copies of exhibits;

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 13th day of  
August, 2008.

Aubrea Hendricks, TX CSR # 7143

Expiration Date: 12/31/08

## **EXHIBIT 3**

**REDACTED**

# **EXHIBIT 4**

**REDACTED**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy thereof of the foregoing Reply Declaration of Gianni P. Servodidio in Support of Plaintiffs' Motion for Leave to File Amended Complaint has been served via email:

Charles S. Baker, Esq.  
Joseph D. Cohen, Esq.  
John R. Hawkins, Esq.  
Porter & Hedges LLP  
RELIANT ENERGY PLAZA  
1000 Main Street, 36th Floor  
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Lauren E. Handler, Esq.  
Porzio, Bromberg, & Newman, P.C.  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, NJ 07962-1997

Date: September 12, 2008



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Gianni P. Servodidio